

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5751 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAGRUT JANTA GENERAL LABOUR UNION

Versus

ASHOK FASHIONS LTD.

Appearance:

MR NR SHAHANI for Petitioner

M/S TRIVEDI & GUPTA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 4, 5, 6

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/12/98

ORAL JUDGEMENT

Rule.

This Special Civil Application is by Jagrut Janta General Labour Union, a duly registered Trade Union under the Trade Union Act. The say of the petitioner is that the employer-respondent No.1 is a Textile Processing

Union which is having about 280 permanent workers and 250 contract labourers.

2. The grievance voiced is that the factory is not paying minimum wages which are enhanced by 10.20 per day since 1.5.1997. It has stopped paying regular wages since January-February, 1998. It is also stated that the Company has not opted for any closure formalities under section 25-O of the Industrial Disputes Act. In this background, following directions are sought:

"(A) directing the respondents No.4 and 5 to take immediate action for payment of minimum wages and unpaid wages pursuant to Annexure "B" within a week from the date of order,

(B) directing the respondent No.5 to prosecute the employer being respondents No.1,2 and 3 and other Directors, for non-compliance with section 25-O, within two weeks from the date of order,

(C) directing respondent No.6 for prosecuting the respondents No.1, 2 and 3 for non-compliance with the provisions of the Factories Act pursuant to our complaint at Annexure 'A',

(D) directing respondents No.1, 2 and 3 to deposit the difference in minimum wages, unpaid wages since February, 1998 and also directing them to continue to pay till termination under section 25-O is obtained by them,

(E) Any other and further reliefs as may be deemed just and proper by your Lordships may please be granted,

(F) Be pleased to award the cost of this petition,

(G) During the pendency and final disposal of this Special Civil Application. Your Lordships may be pleased to make an order in terms of prayer (D) above or any other lump sum monthly amount deemed fit by Your Lordships."

Learned Advocate submits that in spite of the fact that the complaint has been made to all concerned authorities, no serious step has been taken. The petitioner has also complained that whenever the representative of the Union visited respondent No.5 - Commissioner of Labour, they were told that special conciliation by Dy.Commissioner of

Ahmedabad is being arranged. The special conciliation meetings were fixed on 11.7.98 and 18.7.98 but nobody has remained present on behalf of respondents No.1, 2 and 3. It is thus, submitted that the respondent is showing utter disregard for attending even the statutory conciliation proceedings. It is further stated that the employer is constantly pressurising the workers to resign and collect some part of their terminal dues by post-dated resignation letters. This Court, by order dated 20.8.1998, directed the respondents No.1 to 3 to give list of about 100 workmen who have, as per their claim sought voluntary retirement. A further direction has been given to give list of the persons who have sought voluntary retirement, which they have not accepted i.e. the case of pending requests. In compliance of the order, the respondents have filed the required list.

3. An affidavit has been filed by Devidas P Patil, an Executive of the Company. It is stated that the Company is having total accumulated carried forward loss to the extent of Rs.5,90,55,152. It is further submitted that due to very bad financial condition, the company had not been able to clear the dues of the Ahmedabad Electricity Board which are to the tune of Rs.27 lakhs. The Company has also not been able to pay the advance loans obtained from various banks totalling approximately Rs.6.5 crores. The learned Advocate expressed the company's inability to pay the wages on account of financial constraints.

4. Having considered the rival contentions, the only course that may be adopted in the present case is to give directions to the respondent in respect of prayer (A), (B) and (C) except the time limit provided therein.

5. In view of the aforesaid, this Special Civil Application is allowed and the following directions are given:

- (i) Respondents No.4 and 5 to take immediate action for payment of minimum wages and invoke the rules pursuant to annexure "B".
- (ii) Respondent No.5 is directed to take a decision to prosecute the employer company, respondents No.1, 2 and 3 and other Directors for non-compliance of section 25-oo of the Industrial Disputes Act.
- (iii) Respondent No.6 is directed to take appropriate decision for prosecuting respondents No.1, 2 and 3 for non-compliance of provisions of Factories

Act, in pursuance of the complaint of the petitioner Union.

(iv) In case, sanction is granted for filing complaint, the respondent will consider if the petitioner Union can also be authorised to represent the complainant in accordance with the provisions of section 34 of the Industrial Disputes Act.

The aforesaid directions shall be complied with as expeditiously as possible but not later than 8 weeks from the date of receipt of the writ.

Rule made absolute to the aforesaid extent. No order as to costs. Direct Service is permitted.

.....
msp.